

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

GARY L. POLING  
XXX-XX-3661,

Plaintiff,

v.

CIVIL ACTION NO. 1:08CV161  
(Judge Keeley)

MICHAEL J. ASTRUE,  
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

On July 25, 2008, the plaintiff, Gary L. Poling ("Poling"), by counsel, filed a complaint and an Application for Leave to Proceed Without Prepayment of Fees and Affidavit (the "Application"). On July 30, 2008, United States Magistrate Judge James E. Seibert entered a report and recommendation ("R&R") recommending that this Court deny the Application. On August 8, 2008, Poling, by counsel, filed objections to the R&R. Accordingly, the Court reviews the Application de novo.

As the Magistrate Judge notes in the R&R, Poling states in the Application that his average monthly household income over the last twelve months was \$2,965 and his average household expenses for that same time period were \$2,850. He states that his spouse and he share all expenses equally and that they have no dependants. The Application also states that Poling has \$1,600 in a joint checking account, owns two cars on which he makes car payments, and owns a house on which he makes house payments.

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**ORDER ADOPTING REPORT AND RECOMMENDATION**

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In his objections, Poling argues that he operates his household on a tight budget without much extra money for entertainment or purchase of clothing. He also notes that his family home and cars are not paid for and that he cannot easily access any equity that he may have in those assets. He argues that paying the filing fee would be a substantial burden to him and his family.

Upon de novo review, the Court finds Poling does not qualify to proceed without paying the statutorily designated filing fees. The Court notes that Poling has retained an attorney under a contingency fee agreement. Consequently, Poling is not paying legal fees out of pocket. Considering that Poling has \$1,600 in a checking account, the Court finds that it would not be unduly burdensome to require him to pay a one-time civil action filing fee of \$350.00.

Accordingly, the Court **ADOPTS** the R&R in its entirety (dkt. no. 4), **DENIES** Poling's request to proceed without prepayment of fees (dkt. no. 3) and **ORDERS** him to pay the filing fee of \$350.00. The Court further **ORDERS** that Poling tender to the Court, within one hundred twenty (120) days of entry of this Order, the \$350.00 filing fee in the form of a certified check or money order payable to "Clerk, U.S. District Court." In the alternative, the Court

**ORDER ADOPTING REPORT AND RECOMMENDATION**

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permits Poling to pay the filing fee in installments. Should Poling fail to pay the filing fee to the Clerk of the Court within the 120 day period, the Clerk is directed to dismiss the complaint from the Court's docket. Furthermore, the Clerk shall not issue service of process until the initial filing fee is fully paid.

It is so **ORDERED**.

The Clerk is directed to transmit a copy of this Order to all counsel of record.

DATED: August 12, 2008.

/s/ Irene M. Keeley  
IRENE M. KEELEY  
UNITED STATES DISTRICT JUDGE